

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

60291

FILE: B-184893

DATE: December=10, 1975

MATTER OF: West Coast Orient Co.

97605

## DIGEST:

Pursuant to Bid Protest Procedures, 40 Fed. Reg. 17979 (1975) § 20.2(a), protest originally filed and rejected by procuring agency on August 27, 1975, and not filed with GAO until September 11, 1975, more than 10 working days after initial adverse agency action, is untimely and not for consideration on the merits.

By telegram (received at GAO on September 11, 1975) West Coast Orient Company (WCO) has protested the award of contracts to any other bidder on the Marble Mountain Timber Sale and the Salt Timber Sale from the Gifford Pinchot National Forest by the Forest Service. Bids were opened by the Forest Service on August 27, 1975. Awards were made on the same day to Fort Vancouver Plywood Co. on the Salt Timber Sale (Contract No. 02199-5) and to Boise Cascade Corporation on the Marble Mountain Timber Sale (Contract No. 02200-1).

The record reflects that in the portion of the invitation for bids dealing with Small Business Administration size classification, WCO wrote in the words "Under Protest" next to the size classification "Large." WCO was apparently attempting to thereby indicate its disagreement with a Small Business Size Appeals Board determination of December 1974 that held WCO to be other than a small business. We note here that neither of the instant timber sales were in whole or in part small business set-asides.

Based on the notation "Under Protest" the Forest Service rejected WCO's bids at the bid opening as qualified bids. This determination was based upon the fact that the WCO representative present at the bid opening reportedly refused to explain what "Under Protest" referred to.

Since the record was unclear as to whether WCO orally protested the rejection of its bids at this time, we queried WCO on this point. WCO confirmed not only that they made an initial protest at the August 27, 1975, bid openings but that they interpreted the Forest Service reaction to their protest at that time as a rejection of their protest.

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Our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975) § 20.2(a), provide that when protests are initially filed with the contracting agency any subsequent protest to the General Accounting Office must be filed within 10 working days of formal notification of or actual or constructive knowledge of initial adverse agency action.

In the instant case, the record indicates that WCO protested to the Forest Service and received notification of adverse agency action on August 27, 1975. The WCO protest was not filed in our Office until September 11, 1975, more than 10 working days after the initial adverse agency action. Under these circumstances, WCO's protest must be considered as untimely and not for consideration on the merits.

*Milton Aroslan*  
for Paul G. Dembling  
General Counsel



097604

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

60292

FILE: B-185071

DATE: December 10, 1975

MATTER OF: Federal Aviation Administration -  
Request for Advance Decision

97604

## DIGEST:

Low bid may properly be rejected where, during preaward survey and by post-bid-opening correspondence, bidder indicated that it did not intend to comply with specifications. Contracting officer could justifiably use that information to find bidder nonresponsive.

The Federal Aviation Administration, by letter dated October 6, 1975, has requested an advance decision as to whether the bid of Ra-Nav Laboratories, Inc. (Ra-Nav), may be rejected given the following circumstances.

On June 16, 1975, invitation for bids (IFB) No. LGM-5-7653B2 was issued for 60 Doppler VOR frequency monitors and associated spare parts. Bids were opened on July 16, 1975, with 14 bidders responding. The apparent low bidder was Ra-Nav with a total bid of \$99,750. The second low bidder was Struthers Electronics Corporation which submitted a bid of \$149,995.

Because of the large difference between Ra-Nav's bid and the next low bid, the contracting officer requested that Ra-Nav verify its bid. By letter dated July 24, 1975, and received by the procuring activity on August 5, 1975, Ra-Nav verified its bid.

In order to determine Ra-Nav's responsibility, an on-site preaward survey was conducted on August 21 and 22, 1975. The report prepared by the preaward survey team contained the following conclusion:

"In summary, this bidder has misinterpreted the equipment specification and has indicated that he expects the Government to relax its requirements, consequently he has seriously underestimated the cost of equipment and spare parts in the areas cited. This situation of a probable financial loss further reduces our confidence that this offeror would be able to deliver a product meeting the requirements of the Government. Accordingly,

it is concluded that a contract with Ra-Nav Laboratories would result in unsatisfactory performance."

As a result of the findings of the preaward survey team and the low price bid by Ra-Nav, the contracting officer, by letter dated September 5, 1975, to Ra-Nav, indicated the areas in which mistakes in the bid were suspected. One of the two specific areas of suspected mistakes was identified as follows:

"(a) Interpretation of paragraphs 3.8, 3.8.1, and 3.8.2 of specification FAA-E-2615 - from our discussions with Ra-Nav we suspect that you may have misinterpreted the requirements of the above paragraphs. In essence, those paragraphs require that all components be mounted either on printed wiring boards (3.8.1), or, if such mounting is demonstrated to be impractical either because of parts size and weight or because of critical circuit performance, the components may be mounted on chassis-type modules (3.8.2). The specification does not permit mounting of components on the chassis itself or anywhere except on printed wiring boards or chassis-type modules (with the exception of controls and components specified to be mounted elsewhere)."

The specifications, dated February 6, 1975, for the frequency monitors were made available to all bidders but were modified, in pertinent part, by the IFB, as follows:

"3.8 Modular construction. - Modular construction with plug-in or easily replaceable subassemblies shall be employed throughout the equipment in order to provide the specified repair capabilities of paragraph 3.17a. Modularization shall be based on logical functional block concept. As a minimum, separate modules shall be provided for power supply, monitor, RF circuits, and display circuits.  
\* \* \*

"3.8.1 Printed wiring boards. - Except for controls and components specified to be located elsewhere, or where demonstrated to be impractical from the standpoint of parts size and weight, or because of criticality of circuit performance, all circuit parts

shall be mounted on printed wiring boards in accordance with FAA-G-2100/4. (Circuit design and component selection shall be such as to afford for this style of modularization to the maximum practical extent consistent with the electrical performance and reliability requirements of this specification.) All boards shall be of the plug-in type \* \* \*

"3.8.2 Chassis-type modules. - Where it is demonstrated that printed wiring boards (3.8.1) are impractical, chassis type modules shall be utilized. Chassis type modules shall be plug-in \* \* \*"

By letter dated September 12, 1975, Ra-Nav responded to the contracting officer's letter of September 5. Ra-Nav again verified its bid and advised that its price was consistent with the specification. However, in the letter, Ra-Nav indicated by the following statement that it very well may have misconstrued the modifications made by the IFB as concluded by the preaward survey:

"Paragraph (a) of your letter dated 75 SEP 05 [quoted above] describes a substantial change to paragraphs 3.8, 3.8.1, and 3.8.2 of specification FAA-E-2615. If you are interested in changing the specification as you have described, we will be happy to quote a new price based on your new requirements."

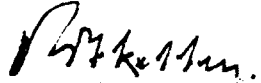
In our view, the contracting officer, in his letter of September 5, did not describe a "substantial change" to the modified specifications but merely described the specifications as contained in the IFB. The specifications contained in the IFB do not permit components to be mounted directly onto the chassis except for a situation not pertinent here. Ra-Nav indicated to the preaward survey team that it did not intend to comply with this specification requirement. While Ra-Nav argues that the specifications are unclear and continues to assert its intended compliance with the specifications, the record indicates to the contrary.

We also note the preaward survey team reported that Ra-Nav "planned on an 800 hour MTBF [Mean Time Between Failure] with failures allowed in the reliability demonstration, whereas the specification requires a 9600 hour MTBF with no failures allowed."

B-185071

We have held that a bid regular on its face should nevertheless be rejected when the contracting officer is aware prior to award that the bidder's intention had always been to perform in a manner inconsistent with the specifications. 46 Comp. Gen. 275 (1966). It is our view that the contracting officer justifiably could use the information contained in the preaward survey and Ra-Nav's letter of September 12, 1975, to support a conclusion that he could not affirmatively find Ra-Nav responsible for this procurement. See B-164878, November 5, 1968.

Therefore, we conclude that the Ra-Nav bid may properly be rejected.

  
Deputy Comptroller General  
of the United States